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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/551,823 | 07/10/2006 | James Gavin Burnet | J7175(C) | 3927 |

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EXAMINER

KRASS, FREDERICK F

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1614

| MAIL DATE | DELIVERY MODE |
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09/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/551,823

Applicant(s)

BURNET ET AL.

Examiner

Frederick Krass

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2, 4-9 and 12-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Frederick Krass
Primary Examiner
Art Unit: 1614

Continuation of 11. does NOT place the application in condition for allowance because:

1) Rejection of claims 2, 4-9, 12 and 13 over Japanese Patent Document 58-208208 (full English language translation):

Applicant states that the reference "quite simply does not disclose steps (f) and (g)." (Remarks, page 6, first paragraph). That may be true, but this is an obviousness rejection under section 103, not an anticipation rejection under section 102. The examiner had directed applicant to MPEP 2144.04 [R-1] in the previous Office Action (see the first paragraph on page 3) as providing legal motivation for modifying the order of mixing. The examiner reiterates his reliance on this section, with special emphasis on subsection V(E), which states that continuous and batch processes are generally considered obvious variants. Note too that the examiner has previously cited prior art demonstrating that batch processing (i.e., letting the binder "stand" before further mixing) during toothpaste manufacture is conventional where slow hydration is expected, e.g., with carrageenin (Office Action dated 03/16/07, page 5, first paragraph). Conversely, applicant has presented no evidence demonstrating that employing a batch step provides any unexpected advantages.

2) Rejection of claim 14 over Japanese Patent Document 58-208208 in view of Trenner (USP 4,544,006):

Applicant argues that the secondary reference is inapposite because it operates filling tube 8 under pressure, not a vacuum. (Remarks, page 6, last paragraph). This argument is viewed as a "piecemeal" analysis of the deficiencies of the secondary reference taken alone, rather than the rejection as a whole. Where introduction under vacuum was required, one skilled in the art would have modified the coaxial injection to occur under vacuum (the secondary reference in fact uses a vacuum in suction tube 4 (see column 2, lines 16-19; see also column 2, lines 59-61)). Again, applicant has presented no evidence of unexpected results associated therewith; to the contrary, the specification states that addition of the thickening mixture "is usually" done in a vacuum, but does not need to be. (See page 10, lines 16-19).